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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/588,211	06/06/2000	Francis R. Koperda	191910-1061	9999

5642 7590 03/12/2004

SCIENTIFIC-ATLANTA, INC.
INTELLECTUAL PROPERTY DEPARTMENT
5030 SUGARLOAF PARKWAY
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EXAMINER

CARDONE, JASON D

ART UNIT	PAPER NUMBER
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2142

DATE MAILED: 03/12/2004

16

Please find below and/or attached an Office communication concerning this application or proceeding.

pre

Office Action Summary

Application No.

09/588,211

Applicant(s)

KOPERDA ET AL.

Examiner

Jason D Cardone

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>See Attached Office Action</u> . |

DETAILED ACTION

Response to Amendment

1. This action is responsive to the remarks of the applicant (Paper No. 15) filed on 1/26/04. Claims 19-28 are presented for further examination.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 19-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Bowcutt et al. (hereinafter Bowcutt), U.S. Patent No. 6,308,328.
4. Regarding claim 19, Bowcutt discloses a method of providing statistics for billing users of data services provided over a cable television network comprising the steps of:
monitoring session duration of a link to a network access device and storing data related thereto [Bowcutt, col. 3, lines 2-28, col. 9, lines 17-65 and col. 19, line 63 – col. 20, line-3];

monitoring amount of data transferred to and from a network access device and storing data related thereto [Bowcutt, col. 3, lines 6-28 and col. 19, lines 5-15]; and

monitoring amount of data lost in the link and storing data related thereto, the statistics permitting a flexible billing structure [Bowcutt, col. 3, lines 44-55 and col. 19, lines 33-52].

5. Regarding claim 20, Bowcutt further discloses the step of monitoring and storing the start time of the session [Bowcutt, col.9, lines 17-65 and col. 19, line 63 – col. 20, line 3].

6. Regarding claim 21, Bowcutt further discloses the steps of subtracting the amount of lost data from the amount of transferred data to obtain an amount of actual data transferred and billing proportional to the amount of actual data transferred and session duration [Bowcutt, col. 3, lines 2-28 and col. 19, lines 53-62].

7. Regarding claim 22, Bowcutt further discloses the steps of recording the address of the network access device and of apparatus to which the network access device is linked during the session [Bowcutt, col. 6, lines 36-49].

8. Regarding claim 23, Bowcutt further discloses the step of providing a plurality of service tiers depending on maximum shared bandwidth or bit rate [Bowcutt, col. 2, lines 31-45 and col. 9, lines 17-65].

9. Regarding claim 24, Bowcutt further discloses the flexible billing structure comprises a fee determined by amount of actual data communicated during a session [Bowcutt, col. 3, lines 44-55].
10. Regarding claim 25, Bowcutt further discloses the step of monitoring quality of service provided a subscriber determined by additionally monitoring jitter and delay [Bowcutt, col. 7, lines 14-60].
11. Regarding claim 26, Bowcutt further discloses the step of storing preauthorized level of service data for subscribers, an administration computer communicating the preauthorized level of service data to a link access controller for regulating service at the preauthorized level [Bowcutt, col. 8, lines 11-25].
12. Regarding claims 27 and 28, Bowcutt further discloses the step of receiving parametric statistical data for a session of a network access device at an administration computer, wherein the parametric statistical data comprises amount of data transferred and amount of data lost [Bowcutt, col. 3, lines 44-55 and col. 19, lines 5-52].

Response to Arguments

13. Applicant's arguments filed 1/26/04 have been fully considered but they are not persuasive.

14. (A) Bowcutt is no longer a 35 U.S.C. 102(e) reference, since the priority date of the present application is at least March 14, 1997 and the Bowcutt was filed on April 10, 1997.

As to point (A), the Bowcutt reference is entitled to the benefit of provisional application, 60/035618, filed on January 17, 1997. The 35 U.S.C. 102(e) critical reference date of a U.S. patent or U.S. application publications and certain international application publications entitled to the benefit of the filing date of a provisional application under 35 U.S.C. 119(e) is the filing date of the provisional application with certain exceptions. See MPEP § 706.02(f)(1), examples 5 to 9. MPEP § 2136.03 (III). Therefore, the Bowcutt reference is entitled to the priority date of at least January 17, 1997. Therefore, the rejected under 35 U.S.C. 102(e) as being anticipated by Bowcutt is valid.

Conclusion

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within ~~TWO MONTHS of the mailing date of this final action and the advisory action is not~~ mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

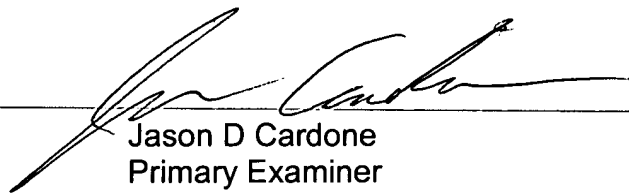
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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason D Cardone whose telephone number is (703) 305-8484. The examiner can normally be reached on Mon.-Thu. (9AM-6PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Harvey can be reached on (703) 305-9705. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jason D Cardone
Primary Examiner
Art Unit 2142

March 11, 2004